



## City of Davenport

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225383



July 15, 2009

The Honorable Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

**FILED**

JUL 21 2009

**SURFACE  
TRANSPORTATION BOARD**

RE: Finance Docket No. 35237, Eastern Iowa Industrial Center Rail Project - City of Davenport, Iowa - Authority to Construct - Petition For An Exemption From 49 U.S.C. §10901 and Petition For Waiver of Filing Fee (Expedited Action Requested)

Dear Acting Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of the Eastern Iowa Industrial Center Rail Project – City of Davenport, Iowa Petition for Exemption and Petition of Waiver of Filing Fee. Please note that with respect to the Petition for Waiver of Filing Fee, expedited action has been requested. Also enclosed is a CD-ROM containing the text of the filings in Word format.

I would appreciate it if you would date-stamp the enclosed extra copies and return them to me in the enclosed postage paid envelope. Please let me know if you have any questions. Thank you for your assistance in this matter.

Sincerely,

Pamela S. Miner, AICP  
Director  
Department of Community Planning & Economic Development  
City of Davenport  
226 W 4<sup>th</sup> Street  
Davenport, IA 52801  
563.326.7769

enclosures

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



**Finance Docket No. 35237**

**Eastern Iowa Industrial Center Rail Project  
City of Davenport, Iowa**

**Authority to Construct**

**Petition For An Exemption From 49 U.S.C. §10901**

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Pursuant to 49 U.S.C. §10502, the City of Davenport ("Petitioner") hereby petitions the Surface Transportation Board ("Board") for an exemption from the prior approval requirements of 49 U.S.C. §10901 for the construction by the City of approximately 2.8 miles of rail line that will provide freight rail service to the Eastern Iowa Industrial Center. The proposed alignment begins at the Eldridge Line of the Iowa Chicago & Eastern Railroad (IC&E) Blackhawk Road crossing, curving to the west through the City of Eldridge and the Eldridge Industrial Park and commercial development, across agricultural land with the terminus Research Parkway in the EIIC. The purpose of the proposed project is to provide rail service to lands designated for industrial development in the northern designated commercial/industrial areas of the cities of Davenport and Eldridge, to enhance opportunities for economic development, and to attract new rail-dependent businesses to those areas.

The exemption would be subject to the completion of environmental review by the Board's Section of Environmental Analysis ("SEA"). The Iowa State Department of Transportation ("IDOT") serves as a co-lead agency in the environmental review process.

This Petition is supported by the attached Verified Statement of Pamela S. Miner, City of Davenport Project Manager.

## **INTRODUCTION**

As established below, the goals of the Rail Transportation Policy will be furthered by exempting the proposed project from regulation under Section 10901. The transaction is clearly limited in scope. It involves the straightforward construction and operation of approximately 2.8 miles of rail line. Further, regulation is not needed to protect shippers from the abuse of market power. Indeed, as the Board and its predecessor, the Interstate Commerce Commission ("ICC"), have often recognized, the construction of new rail lines enhances competition. Accordingly, under the standards for exemption set forth in Section 10502, this Petition should be granted.

## **BACKGROUND**

### **A. *Petitioner***

The City of Davenport is a municipality of the State of Iowa. The City works as a partner with other regional organizations to promote and support economic development activity for the greater Quad Cities region of Iowa and Illinois. The City is a partner with the Greater Davenport Redevelopment Corporation (GDRC) in the ownership and operation of the Eastern Iowa Industrial Center (EIIC). The industrial park has over 300 acres of industrial land available with the potential for more as demand increases.

### **B. *Description and Purpose of Proposed Project and Planned Operations***

The proposed project consists of the construction of a new railroad extension, approximately 2.8 miles in length, located in southern Eldridge, northern Davenport, and an unincorporated part of Scott County Iowa. The project will provide freight rail serves to the

Eastern Iowa Industrial Center (EIIC). The proposed alignment begins on the Eldridge Line of the Iowa Chicago and Eastern Railroad (IC&E) Blackhawk Road crossing, curving to the west through the Eldridge Industrial Park and commercial lands, across First Street and on into agricultural land, culminating at the EIIC. The proposed project will realign the existing Eldridge Line spur of the IC&E located between Blackhawk Road and Trails Road further to the south and will end approximately 1,200 feet north of Research Parkway in the EIIC (Attachment A – Project Location Map).

The EIIC is located in the northeastern quadrant of the I-80 and Northwest Boulevard interchange. It was developed with the intention to provide large (15-30 acres or greater) industrial development sites ready for development with highway, barge, air and rail access. The EIIC addressed a challenge issued by the Quad City Development Group (QCDG) and was intended to fill the void of large rail-served industrial sites ready for development in the region. (The QCDG is the economic development marketing entity for the Quad Cities region.) This need is identified in the *Overall Economic Development Strategy for the Bi-State Region*, prepared to meet Economic Development Administration (EDA) requirements for regional economic development organizations, and which was adopted by the Bi-State Regional Commission.

Other possible sites for the rail extension facility were considered; however the regional other sites did not offer the availability of water and sewer, and the flat topography which EIIC at its current site possessed. Funding for the rail line extension was made available from the federal government through the passage of the 2005 SAFETEA-LU bill, and in 2006 from the Iowa Department of Transportation Rail Revolving Loan and Grant Program.

In sum, the overall goals of the Project are to preserve and enhance freight rail service and to support economic development in Davenport, Iowa and greater Quad Cities region. The

specific objectives are to construct a new rail line extension to attract new rail-dependent businesses to regionally designated industrial areas.

The City of Davenport will retain ownership of the rail line extension, and plans to offer common carrier and contract service to all shippers located at or near the EIIC and adjoining areas that have access to the newly constructed line.

The expected traffic over the lines will vary, depending on the success of attracting new industries to the EIIC and surrounding areas. It is currently estimated that 15 - 20 rail cars per month per customer can be expected based on a comparison of small, medium and large rail users along existing IC&E lines. Based on these estimates, projected rail traffic for the new line would be 180-240 cars per customer per year. A modest build-out scenario of the EIIC is estimated to have 10 additional sites developed with rail access. Using the previous estimates, rail use would total approximately 1,800 - 2,400 rail containers per year.

### **C. *Environmental Review***

Representatives of the Petitioner have consulted with SEA and IDOT on the completion of the environmental review process. The Environmental Assessment process has been completed per IDOT and FHWA requirements; coordination with and approval by SEA is ongoing.

## **DISCUSSION**

### **A. *The Proposed Construction, Acquisition, and Operation are Presumptively in the Public Interest***

As a result of the liberalization of the “public convenience and necessity” standard by the ICC Termination Act of 1995, the Board has adopted a general presumption that construction projects will be approved. See *Class Exemption for the Construction of Connecting Track Under*

*49 U.S.C. 10901, 1 S.T.B. 75, 79 (1996); accord Dakota, Minnesota & Eastern R.R. Corp.*

*Construction into the Powder River Basin, Fin. Dkt. No. 33407, at 17 (Dec. 10, 1998).*

As the Board has stated:

Finding that a shipper sustained or is likely to sustain injury from an abuse of market power by its present carrier is not a prerequisite for approval of a build-out. On the contrary, in enacting the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, Congress intended to facilitate rail construction by changing the statutory standard from requiring approval if the agency finds that a project is consistent with the public convenience and necessity (PC&N) to requiring approval unless the agency finds the project is inconsistent with the PC&N. Under this new standard, proposed rail construction projects are to be given the benefit of the doubt.

*The Burlington Northern and Santa Fe Railway Co. – Construction and Operation Exemption*

*Seadrift and Kamey; TX, Fin. Dkt. No. 34003, at 4 (June 19, 2001) (citation omitted).*

**B. *The Proposed Construction, Acquisition, and Operation Meet the §10502 Exemption Criteria Under §10901***

Construction, acquisition, and operation of a rail line require prior Board approval pursuant to 49 U.S.C. §10901. Under 49 U.S.C. §10502(a), however, the Board must exempt such activity from the prior approval requirements of Section 10901 if it finds that: (1) continued regulation is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. §10101, and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of the exemption provisions, as well as ICC, Board and court decisions, demonstrate that the Board should apply the exemption provision broadly, and that the construction of the lines and related transactions are the types of transactions for which the exemption provision was designed. *See, e.g. American Trucking Ass'ns v ICC*, 656 F.2d 1115, 1119 (4<sup>th</sup> Cir. 1981) (the ICC is charged with the responsibility of actively pursuing exemptions for transportation and service that comply with the section's standards); H.R. Rep. No. 96-1430,

at 105 (1980)(the ICC is charged with removing “as many as possible of the Commission’s restrictions.....”).

As explained in detail below, the proposed rail line construction comply with the Section 10502 exemption criteria and accordingly should be exempted from the requirements of obtaining Board approval under Section 10901.

***1. An Exemption Will Promote the Rail Transportation Policy***

Regulation of the construction of this approximately 2.8 mile rail line is not necessary to carry out the Rail Transportation Policy expressed in Section 10101. Rather, granting an exemption (as opposed to subjecting the proposed project to burdensome regulation) will promote significant provisions of the Rail Transportation Policy and will not run counter to any of the Rail Transportation Policy’s goals.

First, the granting an exemption is consistent with the mandate of Sections 10101(1), 10101(4), and 10101(5) that the Board ensure the development and continuation of a sound rail transportation system with effective competition and coordination between rail carriers that will allow competition and the demand for service to establish reasonable rates and service terms. Specifically, the line will provide the area with increased transportation options and enhanced competition. Second, consistent with Sections 10101(2) and 10101(7), an exemption will minimize the need for federal regulatory control over the rail transportation system and reduce regulatory barriers to entry. Specifically, an exemption here will promote these policies by minimizing the time and administrative expense associated with the construction and acquisition of the rail lines as well as commencement of rail operations. Regulatory barriers to new capacity and infrastructure improvements in particular should be minimized where possible in order to promote and maintain stable economic growth in this sector of the economy.

The Board and its predecessor the ICC have repeatedly found that rail construction and operation projects promote the Rail Transportation Policy by allowing for competition and

encouraging the provision of more efficient transportation service. *See, e.g., The Burlington Northern and Santa Fe Railway Co. – Construction and Operation Exemption – Seadrift and Kamey, TX, supra; Entergy, Arkansas and Entergy Rail – Construction and Operation Exemption – White Bluff to Pine Bluff, AR, Fin. Dkt. No. 33782 (May 4, 2000); Missouri Pacific R.R. Co. – Construction and Operation Exemption – Harris and Chambers Counties, TX, Fin. Dkt. No. 32571 (June 30, 1995), at 4; Gateway Western Ry Co. – Construction Exemption – St. Clair County, IL, Gateway Western Ry. Co. – Petition Under 49 U.S.C. 10901(d), Fin. Dkt. Nos. 32158 and 32158 (Sub-No. 1), at 10 (May 11, 1993) (noting that the Board has “made findings in a series of construction [exemption] cases that the rail transportation policy favors the construction of new rail lines”); accord Burlington Northern R.R. Co. – Construction and Operation Exemption – Macon and Randolph Counties, MO, 9 I.C.C. 2d 1161, 1166-1169 (1993), aff’d sub nom. Missouri Mining, Inc. v. ICC, 33 F.3d 980 (8<sup>th</sup> Cir. 1994).*

Additionally, in today’s competitive environment, the market adequately determines the value of a potential rail construction project. As a result, there is no need for regulatory oversight to determine if the proposed project is economically sound and meets a transportation need. *See Illinois Central R.R. Co. – Construction and Operation Exemption – In East Baton Rouge Parish, LA, Fin. Dkt. No. 33877 (May 25, 2001); Missouri Pacific R.R. Co. – Construction and Operation Exemption – Harris and Chambers Counties, TX, supra, at 4.*

The rail line construction proposal is straightforward and simple. It involves approximately 2.8 miles of new track. Construction of the line raises no concerns which might justify Board scrutiny under Section 10901. As with most projects of this type, an exemption from regulatory review (excepting environmental review and regulation) will advance a number of goals of the Rail Transportation Policy, including minimizing the need for federal regulatory control, ensuring the development and continuation of a sound rail transportation system, allowing competition and demand for service to establish transportation rates and service terms,



and encouraging the efficient management of railroads. None of the goals of the Rail Transportation Policy will be hindered by the granting of this Petition.

In conclusion, formal and potentially protracted Board approval pursuant to Section 10901 is not necessary to carry out the goals of the Rail Transportation Policy. In fact, to require such approval by means other than exemption, with its attendant expense and risk of delay, will undermine the aims of the Rail Transportation Policy.

**2. *The Transaction is Limited In Scope and Regulation Is Not Needed to Protect Shippers from the Abuse of Market Power***

The second test for exemption is stated in the alternative – either the transaction must be of limited scope or the Board must find that regulation of the transaction is not needed to protect shippers from the abuse of market power. Although required to satisfy just one of these alternatives, the proposed project satisfies both.

First, the proposed project is limited in scope. The total length of rail lines to be constructed is approximately 2.8 miles. Under Board precedent applying Section 10502(a), a rail line of such length is – essentially by definition – limited in scope. *See The Burlington Northern and Santa Fe Railway Co. – Construction and Operation Exemption – Seadrift and Kamey, TX, supra* (8.5 miles); *Missouri Pacific R.R. Co. – Construction and Operation Exemption – Harris and Chambers Counties, TX, supra* (10.5 miles); *Burlington Northern R.R. Co. – Construction and Operation Exemption – Macon and Randolph Counties, MO, supra* (17 miles), *The Elk River R.R. – Construction and Operation Exemption – Clay and Karawha Counties, WV, Fin. Dkt. No. 31989* (May 28, 1992) (30 miles); *PSI R.R., Inc. – Construction Exemption – Gibson County, IN, Fin. Dkt. No. 32010* (Feb. 24, 1992) (13 miles); *Southern Electric Generating Co. – Petition for Exemption – Construction of a Rail Line in Shelby County, AL., Fin. Dkt. No. 31498* (Sept. 19, 1989) (7.5 miles); *Louisville & Jefferson County Riverport Auth. and CSX Transp., Inc. – In Jefferson City, KY, Fin. Dkt. No. 31136* (Dec. 22, 1987) (6.7 miles).

Second, the line is primarily intended to enhance rail service to shippers, and therefore regulation of the construction is not needed to protect shippers from the abuse of market power. The Project, when completed, will provide shippers located in the Davenport, Iowa region with enhanced rail service and increased competition. *See Ameren Energy Generating Company – Construction and Operation Exemption – in Coffeen and Walshville, IL*. Fin Dkt. No. 34435, at 4 (“the proposed rail line will provide the area with additional transportation options and enhanced competition”); *Entergy Arkansas and Entergy Rail-Construction and Operation Exemption – White Bluff to Pine Bluff to Pine Bluff, AR, supra*, at 7 (“the proposed transaction will provide... an additional rail transportation option and thus will enable [the shipper] to realize the benefits of increased railroad competition”); *Southern Electric R.R. Co. – Construction and Operation Exemption – West Jefferson, AL, supra*, *Southern Gulf Ry Co. – Construction and Operation Exemption – In Calcasieu Parish, LA*, Fin. Dkt. No. 32321, at 4 (Sept. 9, 1993) (construction and operation of a new rail line to serve a utility coal shipper held not to subject shippers to carrier market power abuses).

### **CONCLUSION**

For the foregoing reasons, the Petitioner respectfully requests that the board grant this Petition for Exemption to authorize the City of Davenport to construct approximately 2.8 miles of rail line subject to this Petition without the need of a full application pursuant to 49 U.S.C. §10901.

Respectfully submitted,



Pamela S. Miner  
Project Manager  
Director of Community Planning &  
Economic Development  
City of Davenport  
226 W. 4<sup>th</sup> Street  
Davenport, IA 52801  
563/326-7769

Dated: July 9, 2009

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 35237**

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**Eastern Iowa Industrial Center Rail Project  
Authority to Construct  
Petition For An Exemption From 49 U.S.C. §10901  
City of Davenport, Iowa**

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**VERIFIED STATEMENT OF PAMELA S. MINER**

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1. My name is Pamela S. Miner. I am Director of the City of Davenport Iowa Community Planning & Economic Development Department. My office address is 226 West 4<sup>th</sup> Street, Davenport, Iowa, 52801.
2. In my position as Department Director I am responsible for the City's planning and economic development functions. I am the responsible party for implementing the City's codes, ordinances, and programs as directed by City Council policy and state and federal law. I am the designated Project Manager for the Eastern Iowa Industrial Center Rail Project and am coordinating the funding and project design and completion. I will be the responsible party for overseeing the maintenance and operation of the rail line on behalf of the City of Davenport.
3. The town of Davenport was incorporated by the Legislature in the winter of 1838-89, and the first election for township officers was held April 1, 1839. In 1843 a new charter was granted the town, which was used without amendment until 1850, when it was amended, and in 1851 repealed by the passage and adoption of a new city charter. Iowa Code provides these powers to a City:

To acquire, whether by construction, purchase, gift or lease, and to improve and equip, one or more projects. The projects shall be located within this state, may be located

within or near the municipality, but shall not be located more than eight miles outside the corporate limits of the municipality, provided that ancillary improvements necessary or useful in connection with the main project may be located more than eight miles outside the corporate limits of the municipality or, in the case of a project which includes portable equipment for pollution control, that the situs of the principal place of business of the owner of such portable equipment is located within the municipality or not more than eight miles outside of the corporate limits of the municipality.

4. The purpose of this Verified Statement is to support the Petition for Exemption filed by the City of Davenport for the construction of approximately 2.8 miles of rail line. I am submitting this Verified Statement on behalf of the City Council of the City of Davenport as authorized by previous Council actions approving the construction of the rail line extension.

5. Funding for the EIIC rail line extension was made available from the federal government through the passage of the 2005 SAFETEA-LU bill, and in 2006 from the Iowa Department of Transportation Rail Revolving Loan and Grant Program. The primary purpose of this project is to improve the rail system serving the EIIC and the City of Davenport. A further purpose is to make the Davenport and Quad Cities area more attractive to heavy industries that use rail transportation and ultimately to promote economic development in the region. A map showing the proposed rail line and the existing rail system line is attached hereto as Exhibit A.

6. In sum, the overall goals of the project are to preserve and enhance freight rail service to support economic development in the Davenport, Iowa area. The specific objectives are to construct new trackage to attract new rail-dependent businesses.

**VERIFICATION**

I, PAMELA S. MINER, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on JULY, 9, 2009.

Pamela S. Miner  
Pamela S. Miner


**CERTIFICATE OF SERVICE**

I do hereby certify that copies of Eastern Iowa Industrial Center Rail Project - Authority to Construct - Petition For An Exemption From 49 U.S.C. §10901 - City of Davenport, Iowa, are being served on the following by First-Class Mail, postage prepaid:

Governor Chet Culver  
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Nancy J. Richardson  
Director  
Iowa Department of Transportation  
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Ames, IA 50010

Iowa Transportation Commission  
Iowa Department of Transportation  
800 Lincoln Way  
Ames, IA 50010

  
\_\_\_\_\_  
Pamela S. Miner

7-9-09  
Date

ATTACHMENT A  
Project Location Map

